



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



C & C Perl, Inc.
Att: William Perl
41 Scenic Road
Laconia, NH 03246

Re: The Broken Antler
Laconia, NH
EPA # 1288120

**ADMINISTRATIVE ORDER
No. WD 02-35**

November 1, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division, to C & C Perl, Inc. pursuant to RSA 485:4 and RSA 485:58. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. C & C Perl, Inc., is a New Hampshire corporation having a mailing address of 41 Scenic Road, Laconia, NH 03246. William C. Perl is president of the corporation and water system representative.

C. STATEMENTS OF FACTS AND LAW

1. RSA 485 authorizes DES to regulate public water supplies. RSA 485:3 authorizes DES to adopt drinking water rules which identify contaminants which may have an adverse effect on health, which establish maximum contaminant levels that are acceptable for human consumption, which establish criteria and procedures to assure compliance with such maximum contaminant levels, and which identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 300.
2. C & C Perl, Inc. is the owner of a water system which serves a restaurant with a seating capacity of 190 known as "The Broken Antler" located in the city of Laconia, NH ("Water System"). The Water System is a transient, non-community water system as defined in RSA 485:1-a, X and Env-Ws 302.02 (ca).

I. BACTERIA MONITORING

3. Env-Ws 315.01 requires all transient, non-community water systems to monitor for bacteria in accordance with a schedule based on the population served by the system.

4. Former Env-Ws 325.02, now codified as Env-Ws 325.05, requires transient, non-community water systems serving fewer than 1,000 people to submit a minimum of one sample during each quarter the water system is open to the public.
5. The Water System is required to routinely collect one water sample during the system's scheduled sampling months of January, April, July, and October of each year.
6. DES issued Administrative Order WD 98-35 (the "Order") to the Water System on December 14, 1998, for, among other things, the Water System's failure to submit samples for total coliform analysis for the scheduled sampling months of April 1998 and October 1998 and for the failure to provide proof of public notice to the Division for a July 1998 total coliform bacteria violation.
7. The Order was sent to the Water System via certified mail return receipt requested but was returned to DES marked "unclaimed" on January 13, 1999. On January 22, 1999, the Order was hand-delivered to Mr. Perl at The Broken Antler by DES personnel.
8. The Water System corrected the violations identified in the Order and DES released the Order on April 16, 1999.
9. The Water System failed to submit a total coliform sample in the system's scheduled sampling months of July 1999, October 1999, January 2000, and April 2000.
10. On June 20, 2000, fire completely destroyed The Broken Antler restaurant. Because the Water System no longer served water to the public, the Water System was temporarily suspended from drinking water monitoring and reporting requirements on June 27, 2000.
11. On or about May 24, 2001, DES personnel learned that The Broken Antler restaurant had been rebuilt and was scheduled to open on May 25, 2001.
12. On August 24, 2001, DES personnel inspected the Water System. The Water System was again placed on a total coliform sampling sample of January, April, July, and October of each year.
13. The Water System failed to submit a total coliform sample in October 2001.
14. The Water System submitted a total coliform sample in January 2002 and April 2002, but failed to submit a total coliform sample in July 2002.

II. NITRATE MONITORING

15. Env-Ws 326.30 requires all transient, non-community water systems to monitor for nitrate on an annual basis.
16. Env-Ws 321.09 requires all public water systems to monitor at the time designated by DES within each compliance period. The Water System was designated to sample for nitrate during the third quarter of 2002.
17. The Water System failed to submit a nitrate sample during the third quarter of 2002, and to date, has not submitted a nitrate sample for 2002.

III. NITRITE MONITORING

18. Env-Ws 326.35 requires all transient, non-community water systems to monitor for nitrite per compliance period.
19. Env-Ws 302.02(k) defines "compliance period" as a three-year calendar period.
20. Env-Ws 321.09 requires all public water systems to monitor at the time designated by DES within each compliance period. The Water System was designated to sample for nitrite during the third quarter of 2002 for the 2000 - 2002 compliance period.
21. The Water System failed to submit a nitrite sample during the third quarter of 2002, and to date, has not submitted a nitrite sample during the 2000 - 2002 compliance period.

IV. PUBLIC NOTICE

22. Prior to January 1, 2002, Env-Ws 351.01 required a water system that failed to submit any of the routine bacteria or chemical monitoring samples required by Env-Ws 321 through Env-Ws 329 to notify persons served by the system within 21 days of the failure to sample. Within 30 days of the failure to sample, the water system was required to provide proof of public notice to DES.
23. As of January 1, 2002, Env-Ws 351.01 requires a water system that fails to submit any of the routine bacteria or chemical monitoring samples required by Env-Ws 321 through Env-Ws 329 to notify persons served by the system within 30 days of the failure to sample. Within 10 days of providing public notice, the water system must provide proof of public notice to the DES.
24. The Water System failed to submit proof of public notice to DES for the July 1999, October 1999, January 2000, April 2000, October 2001, and July 2002 bacteria sampling violations.

V. SANITARY SURVEY

25. Env-Ws 306.01(b) requires that each transient, non-community water system be subject to a sanitary survey at least once every five years. The purpose of the sanitary survey is to conduct an on-site review in order to evaluate the adequacy of the sources, storage facilities, equipment, operation, and maintenance to produce and distribute safe drinking water.
26. Env-Ws 306.01(e) requires that significant operation or facility deficiencies be corrected within 90 days of the date of the sanitary survey.
27. On August 24, 2001, a sanitary survey was performed at the Water System. The January 24, 2002 survey report noted the following significant deficiency:

New Hampshire design standards require that all sources be capable of being sampled individually. Only in this way is it possible to monitor the water supply completely and to isolate pollution sources when necessary. A sampling tap for each source must be installed. The source sampling tap should be located on each well waterline prior to its entry to the first on-line storage tank. They should be located at least 12 inches above the pumphouse floor.

28. The August 24, 2001 sanitary survey required the Water System to correct the significant deficiency within 90 days of the date of the inspection and notify DES in writing when the deficiency has been corrected.
29. As of the date of this Order, DES has not received the requested written response to the significant deficiency identified during the August 24, 2001 sanitary survey.

D. DETERMINATION OF VIOLATIONS

1. The Water System has violated Env-Ws 325.05 by failing to submit water samples for bacterial analysis in July 1999, October 1999, January 2000, and April 2000, October 2001, and July 2002.
2. The Water System has violated Env-Ws 351.01 by failing to provide proof of public notice to DES for the failure to sample for total coliform bacteria in July 1999, October 1999, January 2000, and April 2000, October 2001, and July 2002.
3. The Water System has violated Env-Ws 326.30 by failing to submit a water sample for nitrate in the third quarter of 2002.
4. The Water System has violated Env-Ws 326.35 by failing to submit a water sample for nitrite analysis in the third quarter of 2002 for the 2000 - 2002 compliance period.
5. The Water System has violated Env-Ws 306 by failing to correct the significant deficiency as noted in the Sanitary Survey of August 24, 2001.

E. ORDER

Based on the above findings, DES hereby orders C & C Perl, Inc. as follows:

1. **Within 10 days of the date of this Order**, submit a total coliform sample to the state laboratory or a state-certified laboratory. Within 2 days of completion, submit total coliform results to DES.
2. **Within 15 days of the date of this Order**, notify water consumers of the failure to sample for total coliform bacteria in July 1999, October 1999, January 2000, April 2000, October 2001, and July 2002.
3. **Within 25 days of the date of this Order**, submit proof of public notice required above to DES
4. **Within 10 days of the date of this Order**, submit a nitrate sample to the state laboratory or a state-certified laboratory. Within 2 days of completion, submit the nitrate results to DES.
5. **Within 15 days of the date of this Order**, notify water consumers of the failure to sample for nitrate in the third quarter of 2002.
6. **Within 25 days of the date of this Order**, submit proof of public notice to DES for the failure to sample for nitrate in the third quarter of 2002.
7. **Within 10 days of the date of this Order**, submit a nitrite sample to the state laboratory or a state-certified laboratory. Within 2 days of completion, submit the nitrite results to DES.

8. **Within 15 days of the date of this Order**, notify water consumers of the failure to sample for nitrite in the second quarter of 2002 for the 2000 - 2002 compliance period.
9. **Within 25 days of the date of this Order**, submit proof of public notice to DES for the failure to sample for nitrite in the second quarter of 2002 for the 2000 - 2002 compliance period.
10. **Within 30 days of the date of this Order**, correct the deficiency identified in the August 24, 2001 sanitary survey and submit a letter to DES stating what actions were taken to correct the deficiency.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Alan Leach
Department of Environmental Services
6 Hazen Drive, PO Box 95
Concord, NH 03302-0095
Voice: (603) 271-2854
Fax: (603) 271-3490
e-mail: aleach@des.state.nh.us

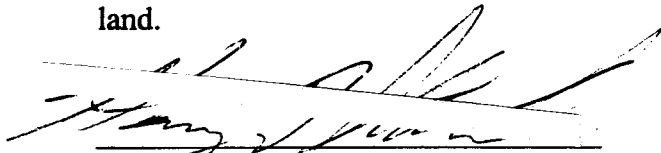
F. APPEAL

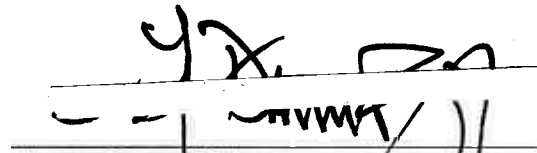
Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve C & C Perl, Inc. of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485:58 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. C & C Perl, Inc. remains obligated to comply with all applicable drinking water statutes and rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.


Harry P. Stewart, P.E. Director
Water Division


George Dana Bisbee
Assistant Commissioner

Certified Mail/RRR: 7099 3400 0003 0692 2105

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
Jennifer Patterson, Sr. Assistant Attorney General
DHHS Restaurant Licensing
Belknap County Registry of Deeds
John Ashby, City of Laconia Health Officer
US EPA, Region 1